

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4202 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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M.G.S.NAMPOOTHIRY

Versus

ASSISTANT COMMISSIONER OF CENTRAL EXCISE

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Appearance:

MR DAXESH T DAVE for Petitioner

MR JAYANT PATEL for Respondents.

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/05/98

ORAL JUDGEMENT

Rule Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. The petitioner herein is the Company duly registered under the Companies Act, 1956. The petitioner filed declaration in respect of their product viz. ceiling fans, table fans, I.C. engine, from time to time claiming freight, trade discount, cash discount, turnover tax, special secondary packing charges, interest on book debts and interest on price finished goods at depots as deduction from wholesale price during the year 1996-97 and the assessment was made provisional as the actual amount of the deductions was not known vide office letter of No.V/17-87/95-Dec./173 - C dated 16-8-1996 by the Assistant Commissioner of Central Excise, Divn-I, Surat allowing the party to pay the duty provisionally.

3. A show cause notice dated 21-1-1998 was issued by respondent no.3 to the petitioner Co. calling upon it to pay Rs.8,95,919/-. The Assistant Commissioner of Central Excise Division-I, Surat passed an order dtd. 29/30.9.97 and disallowed the deduction of interest on sundry debtors, special secondary packing, interest on book debts and interest of finished goods at depots and allowed the deductions as per the cost Accountant Certificate furnished for the year 1996-97. The petitioner thereafter preferred the appeal before the Commissioner (Appeal), Customs and Central Excise, Vadodara i.e. respondent no. 2 and filed stay application. However, respondents no. 3 and 4 called upon the petitioner by the letters dated 4-7-98 and 30-3-98 to make payment. The petitioner, requested respondent no. 2 to hear the appeal and application for stay but as respondent no. 2 paid no attention, this petition has been filed for necessary direction to respondent no. 2 to hear the appeal at the earliest and dispose of the same on merits.

4. So long as the application for stay is pending before respondent no. 2, it would not be just and proper on the part of respondents nos. 3 and 4 to resort to coercive measures and recover the amount. In view of such facts and circumstances of the case, respondent no.2 is required to be directed to dispose of the application for stay at the earliest.

5. For the aforesaid reasons the application is allowed. The respondent no. 2 is directed to dispose of the application for stay preferred by the petitioner in an appeal filed by the petitioner before it within one month from the date of this order. Till then, respondents no. 3 and 4 shall not resort to coercive measures for realization of the aforesaid amount. Rule is accordingly made absolute with no order as to costs.

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